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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,019	10/31/2003	Peter Schlegel	487.1086	2142
23280	7590	12/16/2005		
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			EXAMINER JACKSON, ANDRE L	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/699,019	Applicant(s) SCHLEGEL, PETER	
	Examiner Andre' L. Jackson	Art Unit 3677	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 9-13, 24, 29 and 30.
Claim(s) rejected: 1-8, 14-23, 25-28 and 31-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see 13 below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Continuation of 13. Other: Applicant's arguments presented in the after final amendment of December 7, 2005 are found not to be persuasive.

At the outset, applicant asserts that the Examiner relies upon case law non-relating to claim 31. The rejection of the limitations of claim 31 is set forth in the Final Action of October 4, 2005. The case law the Examiner relied upon in response to applicant's arguments in applicant's previous amendment was directed to independent claims 1, 20 and 27, and whether the case law with respect to Ex parte Masham was used to determine intended use language with respect to a preamble versus the body of a claim is germane to patentability of the phrase "for tensioning the first spring in a second opening phase of the flap". This phrase remains an intended use/ functional language phrase limitation cited in claims 1, 20 and 27 because it must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art if the prior art structure is capable of performing the intended use. Nonetheless, applicant goes further to state that the Examiner can no way label a pivot pin 22 of the prior art relied upon to Nagy as "a tensioning device". Applicant is of the opinion that "a tensioning device" is a structural element that performs or does an act of tension or tensioning. Here, the Examiner disagrees with applicant, and believes a reasonable interpretation of what is considered "a tensioning device" is not merely what applicant asserts but a tensioning device may be considered a link or support for a structural component that carries out an act of tensioning as broadly interpreted in the Final Action. The pivot pin 22 of Nagy is linked/connected to or engages with a spring 44 as a support for a portion of the spring (coiled about the pivot pin) that actually performs an act of tensioning. In other words, by reciting a tensioning device, it is recognized that a device may include one or more working parts which directly or indirectly performs or has an intended function. Thus, the interconnection of a part of the pivot pin 22 with a part of the spring 44, constitutes a tensioning device as broadly interpreted by the Examiner. Therefore, for the foregoing reasoning, the Examiner believes applicant's main points in the remarks in the after final amendment have been addressed and that Nagy meets the structural limitations of applicant's claims as currently presented. Accordingly, claims 1-8, 14-23, 25-28 and 31-33 remain rejected over Nagy and claims 9-13, 24, 29 and 30 remain objected to.



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